THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 36082 OF 1998

Dated 17th April, 2007

Between:

Shankar Singh and another

…Petitioners

And

The Municipal Council, Nizamabad, represented by its Commissioner and another.

…Respondents.

ORAL ORDER:

The petitioners, two in number, have filed this writ petition seeking directions against the respondents not to dispossess them from the land in their occupation, which is being used for their dwelling purposes and further to allot the said land by collecting market value.

As stated in the affidavit filed in support of the writ petition, it is the case of the petitioners that they are in occupation of 130 sq. metres of land for the last 35 years and in the said land, the petitioners have constructed temporary sheds and are using the same for dwelling purpose. It is stated that both the petitioners are employees of Nizamabad Municipality, as they are working as Attender and Watchman, respectively. It is stated that in view of the representation made by the petitioners and in view of their longstanding possession, the Municipal Council also passed resolution for allotment of the land on payment of market value, but no steps have been taken. Precisely, it is their grievance that as much as they are in longstanding possession, and, in view of the resolution of the Municipal Council, no action can be taken to evict them without conducting any enquiry by issuing notice and when their claim for allotment of land is pending consideration.

The Commissioner, Nizamabad Municipality has filed counter affidavit on behalf of the respondents, wherein, while generally denying the various allegations by the petitioners, it is stated that the petitioners were not given any house number for the

temporary structures raised by them. It is stated that water scheme has to be implemented by constructing a overhead tank in the said place and the said constructions were started and the overhead tank had come up to the level of roof and the surrounding municipal land including the land in question is required for implementation of the water scheme. With reference to the resolution of the Municipal Council, it is stated that as per the rules framed under the A.P. Municipalities Act, 1965, the Municipal Council has no authority to transfer the land of the Municipality without previous sanction of the Collector.

With regard to claim for allotment of land to the petitioners on payment of market value, in view of the averments in the counter affidavit that the said piece of land is required for public purpose of implementation of water scheme, no direction can be granted. Though a resolution was passed by the Municipal Council, but no previous sanction was obtained by it. Merely based on the Council's resolution for allotment of land, the petitioners cannot claim any rights. However, as much as the possession of the petitioners is not in dispute, and, as, even in the case of encroachments, steps for their removal have to be taken only after issuance of notice under Section 192 of the A.P. Municipalities Act, 1965, I dispose of this writ petition with a direction that if the petitioners are encroachers of the land belonging to the Municipality, the respondents shall not take any steps for their eviction, unless proceedings are initiated under Section 192 of the A.P. Municipalities Act, 1965. It is made clear that it is open for the respondents to issue notice and take steps in accordance with law.

Subject to above direction, the writ petition is disposed of. No costs.

17-4-2007

R.SUBHASH REDDY, J.